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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,039	09/01/2000	David J. Pawson	50277-1533	6577

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUST  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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OSMAN, RAMY M

ART UNIT	PAPER NUMBER
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2157

MAIL DATE	DELIVERY MODE
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09/05/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/653,039	<b>Applicant(s)</b> PAWSON, DAVID J.	
	<b>Examiner</b> Ramy M. Osman	<b>Art Unit</b> 2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 53,55,58-61,63-65,68-71,73,74 and 76-82 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 53,55,58-61,63-65,68-71,73,74,76-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of Claims***

1. This communication is responsive to amendments filed on June 11, 2007 where applicant amended claim 71. Claims 53,55,58-61,63-65,68-71,73,74,76-82 are pending.

### ***Response to Arguments***

2. Applicant's arguments filed 6/11/2007 have been fully considered but they are not persuasive.
3. Applicant failed to address the objection to claim 73 as mentioned below.
4. Claim 71 remains rejected under 35 USC 101 because the phrase "when put into effect" seems to render the claim as a program per se, as mentioned below.
5. Applicant argues that Shaffer does not teach two or more ongoing audio/video streams.
6. In reply, Applicants arguments seem to imply that the two or more streams are ongoing simultaneously. However, it is noted that the features upon which applicant relies (i.e., simultaneous ongoing streams) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims do not mention that the streams are simultaneous. It is therefore interpreted to be one stream after another stream, in which the streams are modified at different times and not while they are ongoing simultaneously.

***Claim Objections***

7. Claim 73 objected to because of the following informalities: Claim 73 depends upon claim 72 which is a cancelled claim. Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 71,73,74,76,77,78 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. ***MPEP Section 2106(IV)(C)(2)(B)(2)(b)*** mentions that a statutory computer process is determined not by how the computer performs the process, but by what actions the computer performs to achieve a practical application with a useful, concrete and tangible result. In lines 1-2 of claim 71, the phrase “when put into effect” seems to present the claim as a program per se which consists of software instructions without a physical tangible output result that is conveyed to a user in a real-world application of the tangible results. (*see MPEP Section 2106(IV)(C)*). To correct this apparent reference to a program per se applicant is requested to change “put into effect” to “executed by the server” or a synonymous variation thereof.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**11. Claims 53,61,65,71,79,80,81 and 82 rejected under 35 U.S.C. 102(e) as being anticipated by Shaffer et al (US Patent No 5,995,490).**

12. In reference to claims 53,65,71,79,81 and 82, Shaffer teaches a method, computer program product and a stream server system respectively, of operating a stream server, the stream server causing data streams to be provided from one or more stored audio/visual files, the method comprising:

receiving a signal from a client device, said signal including an indication of a client requested presentation action that, when put into effect by the stream server, involves reducing a data rate of a first audio/visual stream being sent from the stream server to the client device or eliminating the transmission of the audio data of the first audio/visual stream to the client device (column 5 lines 10-20 & 40-45);

implementing the client requested presentation action, said act of implementing the client requested presentation action including reducing the data rate of the audio data of the first audio/visual stream or eliminating the transmission of the audio data of the first audio/visual stream to the client device (column 5 lines 35-45); and

determining an amount that a data rate of a second audio/visual stream may be increased as a result of an effect on transmission bandwidth corresponding to the reduction in the data rate of the audio data of the first audio/visual stream or the elimination of the audio data of the first audio/visual stream (column 5 lines 35-67).

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13. In reference to claims 61 and 80, Shaffer teaches a method, computer program product and a stream server system respectively, of operating a stream server, the stream server causing data streams to be provided from one or more stored audio/visual files, the method comprising:

the stream server providing to one or more client devices a first audio/visual stream and a second audio/visual stream (column 4 lines 20-23);

receiving a signal from one of the client device, said signal including an indication of a client requested presentation action that, when put into effect by the stream server, involves reducing a data rate of audio or video data of the first audio/visual stream or eliminating the transmission of the audio or video data of the first audio/visual stream (column 5 lines 10-20 & 40-45);

implementing the client requested presentation action, said act of implementing the client requested presentation action including reducing a data rate of audio or video data of the first audio/visual stream or eliminating the transmission of the audio or video data of the first audio/visual stream (column 5 lines 35-45); and

determining whether a third audio/visual stream may be streamed as a result of an effect on transmission bandwidth corresponding to a reduction in the data rate of audio or video data of the first audio/visual stream or eliminating the transmission of the audio or video data of the first audio/visual stream (column 5 lines 35-67).

***Allowable Subject Matter***

14. Claims 55,58-60,63,64,66,68,70,73,74,76,77,78 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims. Furthermore, claims 71,73,74,76,77,78 would be allowable if the 101 rejection is overcome.

15. The following is a statement of reasons for the indication of allowable subject matter:

The particular limitations of wherein the first and second audio/visual streams are different streams each in a different Single Program Transport Stream, and wherein the second audio/visual stream is sent to a client device different from the client device that receives the first audio/visual stream, are found to be novel. The prior art of record, singly or in combination, fail to teach this aspect of the invention. The claims would be allowable if these limitations (or slight variations thereof) are included in all independent claims.

### ***Conclusion***

16. The above rejections are based upon the broadest reasonable interpretation of the presented claims. Applicant is advised that the above specified citations of the relied upon prior art are only representative of the teachings of the prior art, and that any other supportive sections within the entirety of the reference (including any figures, incorporation by references, claims and priority documents) is implied as being applied to teach the scope of the claims.

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramy M. Osman whose telephone number is (571) 272-4008. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RMO  
August 29, 2007

  
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